IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
and
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 19930 of 2008

Between:
M/s.Ecof Industries Pvt.Ltd., Gudur, Nellore District rep.by its Director
Mr G.Parimalazhagan

..... PETITIONER

AND

1 The Commercial Tax Officer, Guntur District
2 The Asst Commissioner Tax Officer-1, Macherla,Guntur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction preferably one in the nature of writ of Mandamus declaring the action of the respondents in not passing an order for adjusting the tax and penalty of Rs 25,000/- and Rs 50,000/- respectively, which was collected at the Macherla Check Post as illegal arbitrary unconstitutional besides being violative of the provisions of AP VAT act 2005 and also an authoritative pronouncement of this Hon'ble Court and pass such other orders.

Counsel for the Petitioner:MR.A.K.JAISWAL

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following :

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
and
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 19930 of 2008

Order: (per Hon'ble Smt. Justice T. Meena Kumari)

In this writ petition, the petitioner seeks a Writ of Mandamus, declaring the action of the respondents in not passing an order for adjusting the tax and penalty of Rs. 25,000/- and 50,000/- respectively, which was collected at Macherla Check post, as illegal and arbitrary.

The brief facts of the case are that the petitioner is engaged in the manufacture and sale of 'Sabena' Detergent and Scouring powder. While so, on 4.3.2008, the lorry bearing No. AP 26 W 6459 carrying the petitioner's goods from Gudur, Nellore district to Hyderabad was detained at Macherla Check by the 2nd respondent on the ground that the said consignment was not covered by any bill or way bill of the consignor. The 2nd respondent then issued Form 610 directing the petitioner to pay a sum of Rs.25,000/- and Rs. 50,000/- towards tax and penalty. Thereafter, the petitioner filed a detailed representation before the 1st respondent on 7.3.2008 narrating the reasons for non-production of documents. As the goods seized are susceptible to natural decay, the petitioner paid the demanded amount under protest and thereafter, through proceedings dated 7.3.2008 released the goods. Thereafter, the amount of Rs. 25,000/- which was paid by the petitioner towards tax was adjusted by the respondents during the tax period March, 2008, however, the amount of Rs. 50,000/- paid by the petitioner towards penalty was

neither credited to the petitioner's account nor has it been adjusted towards tax for the subsequent period. Hence, the petitioner filed the present writ petition.

Learned counsel for the petitioner submitted that in the impugned notice dated 4.3.2008, the 2nd respondent having mentioned in ground (b) of the grounds of irregularities that the dealer has produced the tax invoice Nos. 1972 and 1973, dated 3.3.2008, ought not to have seized the lorry and demanded the amount on the ground that the goods are not covered by bill or way bill of the consignor.

The learned Special Government Pleader for Taxes, on the other hand, has submitted that the authorized signatory of the company has given a letter dated 7.3.2008 to the 2nd respondent wherein the petitioner company has clearly admitted the guilt and paid the demanded amount by way of demand drafts drawn in favour of the Commercial Tax Officer, Macherla, requesting said respondent not to take further action in the matter and pass a release order.

However, learned counsel for the petitioner disputes the same and states that the said letter was issued under protest.

On a perusal of the impugned notice dated 4.3.2008, issued by the 2nd respondent, it is seen that though the 2nd respondent had mentioned in the impugned notice that "on physical verification, it was found that the goods are not covered by bill or way bill of the consignor", however, clearly stated in No. (b) of the grounds of irregularities mentioned in the said notice that the petitioner had produced the invoices Nos. 1972 and 1973, dated 3.3.2008. In such circumstances, he ought not to have issued the impugned notice demanding the said amount. However, assailing the said action of the 2nd respondent, the petitioner appears to have made a representation to the 1st

respondent on 7.3.2008, which is said to be still pending with the 1st respondent.

In view of the fact that the representation made by the petitioner on 7.3.2008 assailing the impugned notice of the 2nd respondent is still pending with the 1st respondent, we deem it appropriate to direct the 1st respondent to pass appropriate orders on the aforesaid representation of the petitioner.

Accordingly, without going into the merits of the matter, we dispose of this writ petition directing the 1st respondent to consider and pass appropriate orders on the representation dated 7.3.2008 filed by the petitioner, within a period of eight (8) weeks from the date of receipt of a copy of this order, after affording due opportunity of hearing to it. No costs.

T. MEENA KUMARI,J

DATE: 22nd September, 2008

RAMESH RANGANATHAN,J

pnb